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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. A. No. 810/2004

APPELLANT Jaleshwar

Versus

RESPONDENT State of Chhattisgarh

POST FOR JUDGMENT ON 13 -11-2007

Sd/-
Dhirendra Mishra
Judge

(28)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. A. No. 810/2004

APPELLANT	Jaleshwar, S/o Chetan, aged 35 years, R/o village Kuraili, Police Station- Hirri, District Bilaspur (CG)
Versus	
RESPONDENT	State of Chhattisgarh, through Station House Officer, Police Station Hirri, District Bilaspur (CG)

Present:

Mr. V.C. Ottalwar, Advocate, Advocate for the petitioner.

Mr. N.K. Mehta, Panel Lawyer for the State.

J U D G M E N T
(Delivered on 13/11/2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 17th August, 2004 passed in S.T. No. 42/2003 whereby learned 4th Additional Sessions Judge, Bilaspur has convicted the appellant under Section 376(2)(g) of the I.P.C. and sentenced him to undergo R.I. for 10 years, to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo additional R.I. for 5 months.

2. Co-accused Manharan has died during trial.

3. Case of the prosecution in brief is that the daughter of the prosecutrix was married in village Kuraili to Dilip. The prosecutrix lodged a report of Ex. P-4 that because of quarrel of the daughter with her husband and Jeth, the prosecutrix had brought her to her home a day before the incident however, after receiving a message from Kuraili, she went to village Kuraili and participated in the meeting in the night. At about 12.00 in the night, the accused Manharan, Jaleshwar, Jaleshwar Kaushik and two others came to the house of her daughter and asked her to accompany them to the house of Kotwar for Panchayat about her daughter. Near the house of Kotwar, accused Manharan lifted her with Jaleshwar and Jaleshwar Kaushik and two others and took her to some distance and all of them committed rape with her. Around 4.00 in the morning, they left her near the house of Samdhan (mother-in-law of the daughter). She narrated the incident to her daughter and her mother-in-

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law. She would recognize the two persons however, she does not know their name. She could not lodge report because she was unwell. During investigation after registering the offence the prosecutrix was sent for medical examination to Dr. Sardar Patel Hospital, Bilaspur where Dr. Madhulika Sen (P.W. 3) examined her and gave report of Ex. P-2. Test identification parade was conducted by Jogendra Nayak (P.W. 10), in which the prosecutrix correctly identified the accused vide test identification memo of Ex. P-21. Vaginal slides and wearing apparels of the prosecutrix Sari, petticoat and underwear seized during investigation were sent for chemical examination to Forensic Science Laboratory and the report of the Forensic Science Laboratory is Ex. P-22. After completing investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Bilaspur which was received by the Court of Additional Sessions Judge for trial.

4. During trial, the prosecution examined 10 witnesses in all, thereafter statement of the accused was recorded in which the appellant denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. However, the learned trial Court after hearing the learned counsel for the parties, acquitted other accused Jagdish, Chandrika @ Jaleshwar and Ramnarayan and convicted and sentenced the appellant as mentioned above.

5. Learned counsel for the appellant submitted that the conviction of the appellant is based on the statement of the Prosecutrix (P.W. 5) and report of the F.S.L. in which on chemical examination, human sperm has been found in the underwear, petticoat and vaginal slides which corroborates the statement of the prosecutrix. Referring to the evidence of the prosecutrix, it is argued that at the time of incident, she did not raise alarm nor offered any physical resistence, on the contrary, during her Court statement, she categorically stated that Chandrika alias Jaleshwar was not involved in the offence. The explanation for delay in lodging the report is also false as the lady doctor who has examined the prosecutrix has not found any external or internal injury over her person nor she observed any abnormality with the prosecutrix. It is also not mentioned in the report that the prosecutrix was facing difficulty in walking. The place of incident, as is evident from the statement of the prosecutrix, is surrounded by 20 to 25 houses, there is no allegation that the accused persons were armed or that they threatened her, even then not raising alarm by the prosecutrix or not making any attempt to defend herself

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clearly reveals that it is a case of false implication. The background in which the allegations were made i.e. there was a quarrel between the villagers and two persons who accompanied the prosecutrix from village Tifra and both of them were beaten provides reasons for false implication. Referring to paragraphs 22, 23, 24, 25, 32, 63, 64, 65, 66 and 67, it was argued that there are material omissions and contradictions in the statement of the prosecutrix which make her evidence untrustworthy and unreliable. She made material improvement that when she accompanied the accused persons from the house of her daughter, Chhedin Bai (P.W. 6) also accompanied her upto the house of Kotwar, though in the F.I.R., this fact is missing. The statement of Chhedin Bai (P.W. 6) is also unreliable as she has made material improvement in her statement from her diary statement Ex. D-3 as is evident from paragraph 9 of her cross-examination. She has admitted in her deposition in para 18 that she recognizes the Station House Officer Kushwaha who met her on the date of her examination before the Court and she has further stated that he told her and tutored her as to what statement she has to give in the Court today.

6. On the other hand, learned counsel for the State has supported the impugned judgment.

7. I have heard learned counsel for the parties. I have perused the record as also the impugned judgment.

8. Learned trial Court after considering the evidence of the prosecutrix (P.W. 5) and Chhedin Bai (P.W. 6) and after pointing out various discrepancies present in their statements in paragraph 27 of the judgment, has observed that it is seen that there are numerous defects in the prosecution case which are capable of denting the case of the prosecution, however it is settled law that the victim of sexual assault is not treated as accomplice and as such her evidence does not require corroboration from any other evidence including the evidence of the doctor and if there is any doubt, some corroboratory evidence may be looked for and thereafter considering the positive F.S.L. report regarding presence of human sperm in the vaginal slides and wearing apparels of the prosecutrix, convicted the appellant.

9. After carefully scrutinizing the evidence of the prosecutrix, considering the numerous discrepancies, omissions and contradictions present in her statement which have been elaborately reproduced by the

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trial Court in the impugned judgment, the version of the prosecutrix does not inspire confidence. The prosecutrix had gone to village Kuraili for settling the dispute between the daughter and her husband and family members, she was accompanied by other two persons of village Tifra, however, they have not been examined. The case of the prosecution is that the villagers considering them to be musclemen had beaten them after some quarrel ensued between them. Delay of two days in lodging report makes the defence of the appellant that because of the said quarrel a false accusation of rape was made, appears to be probable. Even another accused Jaleshwar, whom she had named in the F.I.R. as also in her diary statement as the perpetrator of the offence, was given a clean chit by her even before trial by filing an application and affidavit of Ex. D-1 and D-2 before police authorities. The trial Court even after suspecting the evidence of the prosecutrix, has convicted the appellant with the ground that her testimony is corroborated from the positive FSL report, however I am of the considered opinion that where the version of the prosecutrix does not inspire confidence, mere presence of human sperm in the vaginal slides and wearing apparels of the prosecutrix would not make her reliable and trustworthy witness on whose testimony, the appellant could be convicted, particularly when the allegation is that all the five accused persons raped her one by one.

10. It is true that uncorroborated testimony of the prosecutrix can be made foundation for conviction and her evidence must receive the same weight as is attached to an injured in case of physical violence, the same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. In the present case, as has already been held that the version of the prosecutrix does not inspire confidence and it would not be safe to base the conviction of the accused on the statement of the prosecutrix and positive F.S.L. report.

11. In the result, the impugned judgment cannot be sustained. The same is set aside. Conviction of the appellant under Section 376(2)(g) of I.P.C. and sentence imposed under that section are set aside. The appellant be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge